

MINUTES  
MALIBU CITY COUNCIL  
REGULAR MEETING  
JULY 28, 2003  
COUNCIL CHAMBERS  
6:30 P.M.

**CALL TO ORDER**

Mayor Kearsley called the meeting to order at 6:47 p.m.

**ROLL CALL**

The following persons were recorded in attendance by the Recording Secretary:

PRESENT: Mayor Ken Kearsley, Mayor Pro Tem Sharon Barovsky, Councilmembers Joan House, Jeffrey Jennings and Andrew Stern

ALSO PRESENT: Katie Lichtig, City Manager; Christi Hogin, City Attorney; Gregg Kovacevich, Assistant City Attorney; Vic Peterson, Building Official; Thomas Gorham, Senior Planning Consultant; Sharyl Beebe, Associate Planner and Lisa Pope, City Clerk

**FLAG SALUTE**

Georgianna McBurney led the Pledge of Allegiance.

**CLOSED SESSION REPORT**

The closed session report was deferred until later in the meeting.

**APPROVAL OF AGENDA**

Councilmember House requested reordering the agenda to hear Item 4.B., 4.D., followed by the other public hearings.

MOTION Mayor Pro Tem Barovsky moved and Councilmember Jennings seconded a motion to approve the agenda with Item 4 -- Ordinances and Public Hearings reordered as Item 4.B., 4.D., 4.A. then 4.C. The motion carried unanimously.

## **REPORT ON POSTING OF AGENDA**

City Clerk Pope reported that the agenda for the meeting was properly posted on July 18, 2003, with the Amended Agenda posted on July 25, 2003.

### **ITEM 1 CEREMONIAL/PRESENTATIONS**

#### **A. Recognition of Deputy Robert Amstutz as one of two STAR Deputies of the Year**

Mayor Kearsley presented a certificate of recognition to Deputy Amstutz for his service and award as Star Deputy. Deputy Amstutz thanked the Council for honoring him.

### **ITEM 2A PUBLIC COMMENTS**

Ozzie Silna questioned the status of the Trancas-PCH settlement and location of the 27 acres of open space.

Jo Ruggles, representing Malibu Trails Association and Trancas Riders and Ropers, provided an update on the Zuma Canyon Chute Trail. She indicated that one of the property owners asked her to convey the following information to the Council and to put the city on formal notice. She stated closure of the trail created a safety issue during the dangerous fire season. She questioned why the issue would be sent to the Trails Committee when the fence issue was a Code Enforcement issue and the trail was a condition of the Javid settlement agreement. She stated there was a problem with extensive fencing.

Marcia Hanscom, Executive Director of Wetlands Action Network and on the Board of Directors of the Sierra Club, commented on rezoning of the Perenchio golf course property. She requested that the Council attempt to ensure the current zoning remained.

Bob Purvey encouraged the Council to invite public input. He expressed frustration regarding Council comments to public speakers.

### **ITEM 2B COUNCIL COMMENTS**

Councilmember House asked where Mr. Silna could obtain information on the Trancas-Pacific Coast Highway settlement. City Attorney Hogin indicated the City Manager would provide Mr. Silna with a copy of the settlement agreement. Councilmember House requested the website indicate where settlement agreements could be obtained. She asked staff to comment on Ms. Ruggles comments regarding trails. City Manager Lichtig indicated a memorandum was

issued to the Council on the status of trails, which she would provide to Ms. Ruggles. She explained that Code Enforcement issues were initiated by written complaint. Councilmember House suggested Ms. Ruggles submit a written complaint. Councilmember House requested information on the Perenchio golf course rezoning.

Mayor Pro Tem Barovsky explained that the General Plan Task Force had recommended the Perenchio golf course property be rezoned from commercial visitor serving to 2-4 houses per acre, which was adopted upon adoption of the General Plan. She addressed Mr. Purvey on the traffic issue he had raised.

Councilmember Jennings stated it was his recollection that the General Plan Task Force recommended the change in zoning on the Perenchio golf course property to residential because most of the community expressed a desire to reduce commercial development in the Civic Center area. He explained the LCP discussions and indicated this property was not discussed during those discussion.

Councilmember House stated zoning of the Perenchio property was not discussed during the LCP process.

Mayor Kearsley congratulated the Chamber of Commerce on their successful Malibu Arts Festival. He read a letter from a mother of one of the 101<sup>st</sup> Airborne adopted soldiers. He announced the six-month pilot program road closure on Civic Center Way beginning August 7, 2003. He indicated the Council would review that program at the end of six months to determine whether it was successful or not.

## **CLOSED SESSION REPORT**

### **Public Comment on Closed Session Items**

None.

City Attorney Hogin report that the Council met in closed session at 5:30 p.m. to discuss the following items:

### **Existing litigation per Government Code Section 54956.9 (a):**

1. Chicksands Properties LTD. v. City of Malibu et al.  
Los Angeles County Superior Court Case No. BS072081
2. City of Malibu v. California Coastal Commission (Streisand Center Coastal Permit)  
Los Angeles County Superior Court Case No. BC230410
3. City of Malibu v. California Coastal Commission / TLC / Liebig

(Referendum)

Los Angeles County Superior Court Case No. SS011355

4. City of Malibu v. California Coastal Commission (AB988 / LCP)

Los Angeles County Superior Court Case No. SC074641

Related cases (city named as a party in interest):

- a. Rick Appel v. California Coastal Commission  
Case No. SC074658
- b. Ralph Herzig v. California Coastal Commission  
Case No. SS011382
- c. Land Use Preservation v. California Coastal Commission  
Case No. SS011388
- d. Riverview Farm Associates v. California Coastal Commission  
Case No. SS011383
- e. Brian Sweeney v. California Coastal Commission  
Case No. SS011387
- f. Trancas-PCH v. California Coastal Commission  
Case No. SC074640
- g. Tuna Ridge v. California Coastal Commission  
Case No. SC011381
- h. Land Use Preservation Defense Fund v. California Coastal Commission

Los Angeles County Superior Court Case No. SS011388

1. City of Malibu, et al. v. County of Ventura, et al. (Ahmanson Ranch)  
Ventura County Superior Court Case No. CIV 216938
2. City of Malibu / Geffen v. Access for All / Coastal Commission et al  
Los Angeles County Superior Court Case No. BC277034
3. United States of America ex rel. Darian v. Accent Builders inc. et al.  
United States District Court Case No. CV00-10255-FMC(JWJx)
4. Malibu Township Council v. City of Malibu II (28-car garage)  
Los Angeles County Superior Court Case No. BS079965
5. Marine Forest Society v. California Coastal Commission Case No. 00AS00567 (Sacramento Superior Court) (Amicus)
6. Rubens v. City of Malibu  
Los Angeles County Superior Court Case No. SC060331
7. Silver v. City of Malibu  
Los Angeles County Superior Court Case No. BS081960
8. Sprint v. City of Malibu et al  
United States District Court Case No. SACV02660 DOC (MLGx)
9. Sweeney et al v. City of Malibu  
Los Angeles County Superior Court Case No. SS011602
10. Taxpayers for Livable Communities; Jay Liebig II v. City of Malibu  
Los Angeles County Superior Court Case No. BS0735585
11. Taxpayers for Livable Communities, Povah, et al. v. City of Malibu

12. Los Angeles County Superior Court Case No. BS072794  
City of Arcadia, et al. v. Regional Water Quality Board, et al.  
Los Angeles County Superior Court Case Nos. BS080807, BS080548,  
SO80753, BS080758, BS080791

**Conference With Legal Counsel – Anticipated Litigation pursuant to Government Code Section 54956.9(b):**

13. Number of Cases: 2

**Real Estate negotiation matters pursuant to Government Code Section 54956.8:**

14. Property APN: 4458-021-005 and 4458-022-012  
City Negotiator: City Manager Lichtig or designee  
Property Negotiator: Tom Fitzpatrick  
Under Negotiation: Price and terms of payment
15. Property APN: 4458-018-002, 018, 019  
City Negotiator: City Manager Lichtig or designee  
Property Negotiator: Roy E. Crummer  
Under Negotiation: Price and terms of payment
16. Property APN: 4458-022-019 and 4458-021-003  
City Negotiator: City Manager Lichtig or designee  
Property Negotiator: Wave Property Inc.  
Under Negotiation: Price and terms of payment
17. Property APN: 4472-027-901 & 902; 4472-028-901 & 902; 4473-005-901  
& 902; 4473-006-900  
Property Negotiator: City Manager Lichtig or designee  
Buyer Negotiator: State of California / Santa Monica Mountains  
Conservancy  
Under Negotiation: Price and terms of payment
18. Property located at: 23801 and 23833 Stuart Ranch Road  
City Negotiator: City Manager Lichtig or designee  
Property Negotiator: Yamaguchi Tokiye Trust  
Under Negotiation: Price and terms of payment

City Attorney Hogin reported that the regular City Council meeting convened at 5:35 p.m. She announced that on a motion by Mayor Pro Tem Barovsky, seconded by Councilmember House, the Council unanimously voted to add the following item to the agenda based on the City Council's finding that a proposed change affecting the price and terms of payment had come to the attention of the City's negotiator earlier that day, after the posting of the agenda, and that there was a need to take immediate action because the purchase opportunity was subject to being lost:

Conference with Real Property Negotiator

PROPERTY: APN 4458-020-016 and APN 4458-020-007 commonly known as the Chili Cook-off Parcels

CITY NEGOTIATOR: Christi Hogin, City Attorney

PROPERTY OWNER NEGOTIATOR: Richard S. Volpert

UNDER NEGOTIATION: Price and Terms of Payment

Having added the item to the closed session agenda, the City Council recessed to closed session.

She reported that the Council discussed some but, due to limited time, not all items listed on the agenda and took no reportable action. She added that the Council discussed only the terms of payment for the Chili Cook-off site and specifically whether a three-year full payment term was feasible for the City. She indicated they then left the closed session to take up the items of the Development Agreement and the entitlements during the open session.

### **ITEM 3      CONSENT CALENDAR**

MOTION      Councilmember House moved and Mayor Pro Tem Barovsky seconded a motion to approve the Consent Calendar. The motion carried unanimously.

The Consent Calendar consisted of the following items:

- A.      Previously Discussed Items  
None.
- B.      New Items
  - 1.      Waive further reading  
Staff recommendation: After the City Attorney has read the title, waive full reading of ordinances considered on this agenda for introduction on first reading and/or second reading and adoption.
  - 2.      Approve Warrants  
Staff recommendation: 1) To allow and approve warrant demand numbers 22456 through 22459, 22465 through 22479 and 22488 through 22543 listed on the register from the General Fund and direct the City Treasurer to pay out the funds to each of the claimants listed in Warrant Register No. 289 in the amount of the warrant appearing opposite their names, for the purposes stated on the respective demands, including payroll checks, in a total amount of \$960,405.81, including ADP payroll voucher numbers 4457895 – 4457912 in the amount of \$95,693.34; and 2) to allow and approve warrant demand numbers 22460 through 22464, 22480 through 22487 and 22544 through 22568 listed on the register

from the General Fund and direct the City Treasurer to pay out the funds to each of the claimants listed in Warrant Register No. 290 in the amount of the warrant appearing opposite their names, for the purposes stated on the respective demands making a total amount of \$69,036.13.

3. Approval of Minutes

Staff recommendation: Approve City Council meeting minutes for the Regular City Council meeting held on June 23, 2003.

CONSENSUS

By consensus, the Council determined to hear Item 4.D. at this point.

ITEM 4 ORDINANCES AND PUBLIC HEARINGS

D. Malibu Bay Company Development Agreement -- Applicant: Malibu Bay Company; Owner: Malibu Bay Company; Location: Civic Center, Trancas Canyon, and Point Dume area (Continued from Special City Council Meeting of July 24, 2003)

Staff recommendation: If the City Council chooses to approve the Development Agreement and all associated items, it should:

- 1) adopt Resolution No. 03-31 certifying the Environmental Impact Report;
- 2) adopt Resolution No. 03-32 approving applicable General Plan Amendments, as related to the proposed Development Agreement;
- 3) after the City Attorney reads the title of the ordinance, introduce on first reading Ordinance No. 249 amending Malibu Municipal Code (MMC) Chapter 17.42, creating West Zuma Residential Overlay District and Trancas Canyon Residential Overlay District;
- 4) after the City Attorney reads the title of the ordinance, introduce on first reading Ordinance No. 250 adding MMC Chapter 17.43, creating the Town Center Overlay District and West Zuma Commercial Overlay District;
- 5) after the City Attorney reads the title of the ordinance, introduce on first reading Ordinance No. 251 approving certain amendments to the Zoning Map, as related to the proposed Development Agreement;
- 6) adopt resolution No. 03-33 approving the remaining miscellaneous entitlements as related to the proposed Development Agreement;
- 7) after the City Attorney reads the title of the ordinance, introduce on first reading Ordinance No. 252 approving the proposed Malibu Bay Company Development Agreement;
- 8) adopt Resolution No. 03-43 calling and giving notice of the holding of a Special Municipal Election to be held on Tuesday, November 4, 2003, for the submission to the qualified voters a proposed ordinance;

- 9) adopt Resolution No. 03-44 requesting the Board of Supervisors of the County of Los Angeles to consolidate a Special Municipal Election to be held on November 4, 2003, with the Statewide General Election to be held on the date pursuant to Section 10403 of the Elections Code;
- 10) adopt Resolution No. 03-45 providing for the filing of rebuttal arguments for city measures submitted at municipal elections;
- 11) adopt Resolution No. 03-46, setting priorities for filing written arguments regarding a city measure and directing the City Attorney to prepare an impartial analysis; and
- 12) direct staff to schedule second reading and adoption of Ordinance Nos. 249, 250, 251, and 252 on July 28, 2003.

City Attorney Hogin presented the staff report. She reviewed modifications to the Final Draft Development Agreement.

Ted Vaill discussed his assumptions regarding what would happen if the City did not purchase the Chili Cook-off site within 3 years.

Steve Hotchikiss deferred his time to Patt Healy.

Patt Healy discussed the proposed mitigation measures. She discussed the proposed Town Center Overlay District. She urged the Council to reduce the density of commercial development. She discussed the potential environmental effects of the proposed development. She discussed the negative health effects of air pollution on children.

Bonnie Schulze deferred her time to Lucile Keller.

Lucile Keller, representing Malibu Township Council, stated the Council would be allowing the developer to re-write portions of the General Plan to suit his development. She indicated objection to the use of overlay districts. She stated the EIR was still incomplete and incorrect, particularly the traffic analysis. She discussed the proposed mitigation measures and indicated they were inadequate. She urged the Council to not approve the development agreement.

Stan Byrnes discussed the proximity of the proposed Trancas commercial development in relation to his home. He requested the Council delay approval of the Trancas commercial and incorporate his requests.

Ozzie Silna raised the issue of the incompleteness of the EIR. He discussed Section 15126.2 of the CEQA guidelines. He asked if residences would be included in the proposed wastewater treatment facility on the Chili Cook-off site.



Efrom Fader, representing Malibu Township Council, discussed the proposed wastewater treatment facility on the Chili Cook-off site and the allowance of Mr. Perenchio's Malibu Colony property to utilize the facility. He discussed changes to the amount of allowable commercial development.

Bob Carmichael discussed the Planning Commission's deliberations on Plan B and the proposed Development Agreement. He asked why the Council's minds were made up and why the rush. He stated that the Planning Commission felt Plan B needed further investigation.

Art London deferred his time to John Mazza.

John Mazza discussed the definition of "rentable square footage" in the proposed development agreement as opposed to "square footage." He discussed the sewer issue and the Pt. Dume Agreement.

Robert Roy Van De Hoek stated the sewage treatment plant would not work. He discussed pollution to Malibu Creek and Lagoon. He stated the City would be in violation of the Endangered Species Act. He urged the Council to vote no. He raised possible court consequences.

Sally Benjamin deferred her time to Chris Benjamin.

Chris Benjamin discussed the Planning Commission's review of the development agreement. He discussed the proximity of the water treatment plant to his property, and indicated he did not want it in his back yard. He asked the status of negotiations on the Yamaguchi and Pepperdine on adjacent properties.

Jo Ruggles deferred her time to Marcia Hanscom.

Marcia Hanscom, Executive Director of the Wetlands Action Network, and on the Board of Directors of the National Sierra Club, stated the Council would be in violation of CEQA if it certified the Environmental Impact Report. She discussed Section 5.4.1. – Chili Cook-off Contingency of the Final Draft Development Agreement. She indicated her belief that the Council would be in violation of Section 7 of the Endangered Species Act.

Sandra Genis discussed CEQA as it applies to this project. She urged the Council to take the time to get its environmental documentation in order.

Bob Purvey discussed the proposed use of the Chili Cook-off site and proposed wastewater treatment facility. He urged the Council to reconsider the plan.

Ruby Fader deferred her time to Tami Clark.

Tami Clark discussed the amount of information and lack of time for review. She indicated support of the public's right to vote on development agreements. She discussed the Planning Commission's hearing on the proposed development agreement. She urged the Council to continue its analysis of the DA and receive public input.

Rich Fox stated he could not speak to the points of the development agreement because he has not had the opportunity to read it. He expressed concern regarding the lack of time for analysis and comment. He stated litigation and coastal permits could impact the agreement. He expressed his desire to not rush the process.

Marissa Coughlan urged the Council to move forward and approve the development agreement as recommended.

Suzanne Guldinmann deferred her time to Steve Uhring.

Sherman Baylin was not present at the time of the hearing.

Steve Uhring discussed the Planning Commission's recommendations on Plan B. He stated the Council was rushing to put the development agreement on the November 2003 ballot. He played a portion of comments made by Mayor Kearsley at a Malibu CAN meeting.

Max Gail discussed the feelings associated with the proposed development agreement. He discussed Mayor Kearsley's comments to Malibu CAN.

Charlene Kabrin stated traffic impacts were not mitigatable. She discussed possible health and safety issues associated with the proposed wastewater treatment facility.

Marlene Matlow urged the Council to forward the matter to the voters.

David Kagon discussed the requirements related to the Chili Cook-off site including funding, permitting and litigation.

Georgianna McBurney urged the Council to approve the agreement and allow the voters to decide.

Mayor Kearsley announced that he appointed Dennis Seider to Santa Monica Mountains Conservancy board to represent the City.

RECESS Mayor Kearsley called a recess at 8:50 p.m. The meeting reconvened at 9:02 p.m. with all Councilmembers present.

Mayor Kearsley closed the public hearing.

Councilmember House thanked everyone for coming out and expressing their opinions and concerns. She explained that the City approached the Malibu Bay Company (MBC) for a development agreement. She discussed the Planning Commission's hearing on the matter. She asked the City Attorney to state which MBC properties were guaranteed to hook up to wastewater treatment plant. City Attorney Hogin stated there was not yet a plant. She indicated that the details needed to be worked out. She further indicated that the agreement was drafted in order to provide for the broadest inclusion, not for MBC's benefit, but for the purpose of cleaning the water in the Lagoon and the Ocean environs.

Councilmember House asked if the Perenchio golf course was guaranteed use of the facility. City Attorney Hogin stated Perenchio's golf course could be hooked up to a treatment facility due to its location. She referenced Development Agreement Section 5.4.1. She stated the facility had not yet been designed and therefore capacity was not yet determined. She stated that the primary benefit of the agreement is the option to buy the Chili Cook-off property. She further indicated that if the Council approved the agreement, staff's next task would be to start seriously looking at what could be designed and developed. She discussed the future chain of events. She reminded the community that it was the City Council that decided that the development agreement would go to a vote of the people. She discussed the various iterations of the development agreement. She discussed the need for an urgent care center. She discussed the importance of clean water.

Councilmember Jennings discussed the threat of development under the IZO and General Plan. He discussed the changing goals of the community and indications that the process was flawed. He stated the voters could decide on the development agreement if it goes forward. He discussed MBC's indication that it would be a willing seller of the Chili Cook-off site. He explained that the only way to get State money to buy the site was if it was somehow related to wastewater and storm water quality. He

discussed the three-year cap on the development agreement. He discussed the issues of possible litigation. He stated the City could now acquire the Chili Cook-off site for open space to ensure that wastewater created in the Civic Center area does not pollute the Creek and Lagoon. He explained that if the Council approved the Development Agreement, the voters would then decide whether they agree with the Development Agreement. He stated the 10-year moratorium was no longer part of the deal if the City does not buy the Chili site. He stated that the Mayor's "crap shoot" language was about a different deal.

Councilmember Stern explained why he asked people's addresses and affiliations. He discussed the Planning Commission's discussion. He stated the negotiations had to end at some point. He stated it was time to send the agreement to the voters.

Councilmember Jennings discussed Mr. Mazza's remarks regarding rentable square footage. City Attorney Hogin explained the intent. She stated that those places where rentable square footage is used to talk about amount of square footage to be built a parenthetical phrase ("not to exceed ### total square feet") will be added to the development agreement.

Mayor Pro Tem Barovsky discussed Council's direction to the City Attorney to renegotiate. She stated she does not have heartburn about three-year time frame as her colleagues have. She discussed potential litigation. She stated the owners of the Yamaguchi and Pepperdine properties were not willing sellers. She stated the Planning Commission overwhelmingly supported Plan B, but wanted uncoupling. She stated a judge would decide if the Council violated CEQA. She stated it was time for the voters to decide. She discussed Mayor Kearsley's comment at the Malibu CAN meeting that the previous agreement was a "crap shoot."

Mayor Kearsley discussed his statement that the agreement was a "crap shoot" before it was renegotiated. He stated the alternative to the City purchasing the Chili Cook-off site was development under the IZO and General Plan. He discussed the proposed wastewater treatment facility for the Chili Cook-off site.

MOTION Councilmember House moved and Mayor Pro Tem Barovsky seconded a motion to adopt Resolution No. 03-31 certifying the Environmental Impact Report. The question was called and the motion carried unanimously.

MOTION Councilmember House moved and Councilmember Jennings seconded a motion to adopt Resolution No. 03-32 approving applicable General Plan

Amendments, as related to the proposed Development Agreement. The question was called and the motion carried unanimously.

MOTION: Councilmember House moved and Councilmember Jennings seconded a motion to 1) introduce on first reading Ordinance No. 249 amending Malibu Municipal Code (MMC) Chapter 17.42, creating West Zuma Residential Overlay District and Trancas Canyon Residential Overlay District; 2) introduce on first reading Ordinance No. 250 adding MMC Chapter 17.43, creating the Town Center Overlay District and West Zuma Commercial overlay District; 3) introduce on first reading Ordinance No. 251 approving certain amendments to the Zoning Map, as related to the proposed Development Agreement; and 4) adopt Resolution No. 03-33 approving the remaining miscellaneous entitlements as related to the proposed Development Agreement. The question was called and the motion carried unanimously.

MOTION Councilmember House moved and Mayor Pro Tem Barovsky seconded a motion to introduce on first reading Ordinance No. 252 approving the Malibu Bay Company Development Agreement and direct staff to schedule a second reading and adoption of Ordinance Nos. 249, 250, 251 and 252 on August 5, 2003. The question was called and the motion carried unanimously.

MOTION Councilmember House moved and Mayor Pro Tem Barovsky seconded a motion to 1) adopt Resolution No. 03-43 calling and giving notice of the holding of a Special Municipal Election to be held on Tuesday, November 4, 2003, for the submission to the qualified voters of a proposed ordinance; 2) adopt Resolution No. 03-44 requesting the Board of Supervisors of the County of Los Angeles to consolidate a Special Municipal Election to be held on November 4, 2003, with the Statewide General Election to be held on the date pursuant to Section 10403 of the Elections Code; 3) adopt Resolution No. 03-45, providing for the filing of rebuttal arguments for city measures submitted at municipal elections; and 4) adopt Resolution No. 03-46, setting priorities for filing written arguments regarding a city measure and directing the City Attorney to prepare an impartial analysis. The question was called and the motion carried unanimously.

- B. Zoning Text Amendment No. 03-003 / Negative Declaration No. 03-002 - An Amendment to Title 17 (Zoning) of the Malibu Municipal Code, Chapter 17.46 (Wireless Telecommunications Antennas and Facilities), to clarify regulations, procedures and application requirements for the installation of wireless telecommunication antennas and facilities in the City of Malibu

Staff recommendation: 1) Adopt Resolution No. 03-41 approving Negative Declaration No. 03-002 for an amendment to Title 17 Interim Zoning Ordinance, Chapter 17.46 (Wireless Telecommunications Antennas and Facilities), to clarify the regulations, procedures, and application requirements for the installation of wireless telecommunications antennas and facilities in the City of Malibu; 2) after the City Attorney reads the title of the ordinance, introduce on first reading Ordinance No. 253 approving Zoning Text Amendment No. 03-003 regarding zoning changes to Title 17 (Zoning) of the Malibu Municipal Code, Chapter 17.46 (Wireless Telecommunications Antennas and Facilities), to clarify the regulations, procedures, and application requirements for the installation of wireless telecommunication antennas and facilities in the City of Malibu; and 3) direct staff to schedule second reading and adoption of Ordinance No. 253 on August 11, 2003.

Senior Planning Consultant Gorham presented the staff report.

Bob Carmichael discussed the environmental and health issues associated with low frequency antennae. He stated the Planning Manager had not listened to his concerns. He expressed concern regarding the potential impacts.

John Mazza deferred his time to Ryan Embree.

Ozzie Silna deferred his time to Ryan Embree.

Ryan Embree asked if his prior concerns had been incorporated into the ordinance. He asked if the City had the right to regulate wireless telecommunications with respect to enhancement of the City's Emergency Response Network. He discussed the need to make sure the systems will work in an emergency.

Councilmember House provided suggested modifications to the ordinance.

Mayor Pro Tem Barovsky indicated support for the changes proposed by Councilmember House.

Councilmember Jennings discussed previous proposals for antennas. He explained that the City was no longer allowed to address health and safety issues. He provided suggested modifications to the proposed ordinance.

Mr. Carmichael discussed the concerns expressed by the Point Dume Community Association. He suggested cell sites be prohibited on Point

Dume. Councilmember House requested Mr. Carmichael provide documentation on how other cities have excluded certain residential areas.

In response to Councilmember Jennings, Assistant City Attorney Kovacevich discussed the wireless company's participation in crafting the ordinance. He discussed the preemption in this field.

MOTION Councilmember House moved and Councilmember Jennings seconded a motion to adopt Resolution No. 03-41 approving Negative Declaration No. 03-002 for an amendment to Title 17 Interim Zoning Ordinance, Chapter 17.46 (Wireless Telecommunications Antennas and Facilities), to clarify the regulations, procedures, and application requirements for the installation of wireless telecommunications antennas and facilities in the City of Malibu; 2) after the City Attorney reads the title of the ordinance, introduce on first reading Ordinance No. 253, as amended, approving Zoning Text Amendment No. 03-003 regarding zoning changes to Title 17 (Zoning) of the Malibu Municipal Code, Chapter 17.46 (Wireless Telecommunications Antennas and Facilities), to clarify the regulations, procedures, and application requirements for the installation of wireless telecommunication antennas and facilities in the City of Malibu; and 3) direct staff to schedule second reading and adoption of Ordinance No. 253 on August 11, 2003. The question was called and the motion carried unanimously.

- A. 2002 Congestion Management Program -- Compliance with the congestion Management Program for Los Angeles County and the Adoption of the 2003 Local Implementation Report  
Staff recommendation: Hold a public hearing and adopt Resolution No. 03-37, finding the City in conformance with the 2002 Congestion Management Program (CMP) and adopting the CMP 2003 Local Implementation Report in accordance with California Government Code Section 65089.

Associate Planner Beebe presented the staff report.

MOTION: Councilmember House moved and Mayor Pro Tem Barovsky seconded a motion to adopt Resolution No. 03-37 finding the City in conformance with the 2002 Congestion Management Program (CMP) and adopting the CMP 2003 Local Implementation Report in accordance with California Government Code Section 65089. The question was called and the motion carried unanimously.

- C. Zoning Text Amendment No. 03-002 / Negative Declaration No. 03-003 - An Amendment to Title 17 (Zoning) of the Malibu Municipal Code,

Chapter 17.04 (Administration and Enforcement), more specifically Section 17.04.120 (Application -- Filing), to consider the deletion of a code provision that bars zoning applications where a code violation exists on the subject property and removing the reference of "Interim" throughout the zoning ordinance

Staff recommendation: : 1) Adopt Resolution No. 03-42 approving Negative Declaration No. 03-003 for a Zoning Text Amendment proposing changes to Title 17 (Zoning) of the Malibu Municipal Code, Chapter 17.04 (Administration and Enforcement), more specifically Section 17.04.120 (Application - filing), deleting the code provision that bars zoning applications where a code violation exists on the subject property and removing the reference of "interim" throughout the Zoning Ordinance; 2) after the City Attorney reads the title of the ordinance, introduce on first reading Ordinance No. 254 approving Zoning Text Amendment No. 03-002 regarding zoning changes to Title 17 (Zoning) of the Malibu Municipal Code, Chapter 17.04 (Administration and Enforcement), more specifically Section 17.04.120 (Application - filing), deleting the code provision that bars zoning applications where a code violation exists on the subject property and removing the reference of "interim" throughout the Zoning Ordinance; and 3) direct staff to schedule second reading and adoption of Ordinance No. 254 on August 11, 2003.

Senior Planning Consultant Gorham presented the staff report.

John Mazza stated obvious violations should be corrected when a commercial applicant comes in to improve commercial property.

Norm Haynie stated there was a problem with nexus for a person's right to file an application for one structure with a violation on another structure.

Marissa Coughlan agreed with the staff recommendation. She suggested staff be provided the opportunity to expedite the process.

Mayor Pro Tem Barovsky stated she did not recall the Planning Commission's discussion, and asked if Mr. Mazza knew their reason for not addressing his concern. Mr. Mazza stated the matter was not discussed.

Councilmember Jennings stated that the problems were well laid out in the staff report.

Councilmember House indicated support for removing "interim" throughout Title 17. She stated she would be interested in having a checklist for compliance for commercial properties.



Mayor Pro Tem Barovsky stated parking should be checked.

Councilmember Jennings stated that the Forge Lodge provides a good example of the positive effect of the amendment.

Councilmember Stern expressed his belief that the amendment could be bigger than the Council realizes.

Environmental and Community Development Director Peterson explained that change of occupancy at commercial properties required a new occupancy permit and inspection, which covers parking, ADA and health and safety issues. He discussed the parking requirements.

**MOTION** Councilmember Jennings moved and Councilmember Stern seconded a motion to adopt Resolution No. 03-42 approving Negative Declaration No. 03-003 for a Zoning Text Amendment proposing changes to Title 17 (Zoning) of the Malibu Municipal Code, Chapter 17.04 (Administration and Enforcement), more specifically Section 17.04.120 (Application - filing), deleting the code provision that bars zoning applications where a code violation exists on the subject property and removing the reference of "interim" throughout the Zoning Ordinance; 2) after the City Attorney reads the title of the ordinance, introduce on first reading Ordinance No. 254 approving Zoning Text Amendment No. 03-002 regarding zoning changes to Title 17 (Zoning) of the Malibu Municipal Code, Chapter 17.04 (Administration and Enforcement), more specifically Section 17.04.120 (Application - filing), deleting the code provision that bars zoning applications where a code violation exists on the subject property and removing the reference of "interim" throughout the Zoning Ordinance; and 3) direct staff to schedule second reading and adoption of Ordinance No. 254 on August 11, 2003. The question was called and the motion carried unanimously.

**ITEM 5 OLD BUSINESS**

A. Consideration of Proposal from WildRescue (Continued from July 14 2003)

Staff recommendation: To avoid confusion and future conflicts, staff recommends that the City not contract with WildRescue for marine mammal rescue services.

City Manager Lichtig stated that Rebecca Dmytryk provided Council with written comments which were contained in their packets.

Arthur Harris discussed the need for volunteers to provide wildlife rescue. He stated WildRescue and California Wildlife Center worked together. He encouraged the Council to support the WildRescue proposal.

Rebecca Dmytryk requested the Council approve her proposal.

Beth Caskie indicated opposition to the proposal by WildRescue. She stated CWC was unable to include Ms. Dmytryk in CWC's responder team due to legal restrictions.

Councilmember Stern stated he did not understand why more people could not be helping the animals.

Mayor Pro Tem Barovsky indicated support for WildRescue's proposal.

Councilmember Jennings stated the benefits of two services will outweigh the burdens. He stated the agreement was for one year and could be reevaluated. He stated he could support an agreement for a one-year period.

Mayor Kearsley stated he could support a one-year agreement.

Councilmember House stated the WildRescue letter was misleading. She stated she could not support the WildRescue proposal. In response to remarks made by Mayor Pro Tem Barovsky, Councilmember House stated that WildRescue does not have the necessary credentials from Fish and Game or the State of California.

Ms. Dmytryk explained that no permits were required for transport of injured animals.

**MOTION** Councilmember Jennings moved and Councilmember Stern seconded a motion to authorize the City Manager to enter into an agreement with WildRescue in a form acceptable to City Attorney for one year. The question was called and the motion carried 4-1, Councilmember House dissenting.

**ITEM 6. NEW BUSINESS**

None.

**ITEM 7. COUNCIL ITEMS**

None.

**ADJOURN** At 11:30 p.m., Councilmember Jennings moved and Councilmember Stern seconded a motion to adjourn. The motion carried unanimously.

Approved and adopted by the City Council of  
the City of Malibu on September 22, 2003.

---

KENNETH KEARSLEY, Mayor

ATTEST:

---

LISA POPE, City Clerk  
(seal)